

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALEX ANTHONY RUBIO, ) Case No.: 1:20-cv-0085 JLT HBK (HC)  
Petitioner, )  
v. ) ORDER ADOPTING THE FINDINGS AND  
ROSEMARY NDOH, ) RECOMMENDATIONS, DENYING PETITION  
Respondent. ) FOR WRIT OF HABEAS CORPUS,  
 ) DIRECTING CLERK OF COURT TO CLOSE  
 ) CASE, AND DECLINING TO ISSUE  
 ) CERTIFICATE OF APPEALABILITY  
 ) (Doc. 22)  
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Alex Anthony Rubio is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 15, 2023, the assigned magistrate judge issued Findings and Recommendations, recommending the petition for writ of habeas corpus be denied and that the Court decline to issue a certificate of appealability. (Doc. 22.) The Findings and Recommendations were served upon all parties and contained notice that any objections were to be filed within 14 days after service. (*Id.* at 22.) In addition, the parties were “advised that failure to file objections within the specified time may result in the waiver of rights on appeal.” (*Id.* at 23, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). Petitioner did not file objections, and the deadline to do so expired.

According to 28 U.S.C. § 636 (b)(1)(C), the Court conducted a *de novo* review of the case.

1 Having carefully reviewed the entire matter, the Court concludes the Findings and  
2 Recommendations are supported by the record and proper analysis.

3 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather  
4 an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36  
5 (2003); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the Court may only  
6 issue a certificate of appealability “if jurists of reason could disagree with the district court’s  
7 resolution of [the petitioner’s] constitutional claims or that jurists could conclude the issues  
8 presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327;  
9 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While Petitioner is not required to prove the merits  
10 of his case, he must demonstrate “something more than the absence of frivolity or the existence of  
11 mere good faith on his . . . part.” *Miller-El*, 537 U.S. at 338.

12 The Court finds that reasonable jurists would not find the Court’s determination that the  
13 petition should be denied debatable or wrong, or that the issues presented are deserving of  
14 encouragement to proceed further. Petitioner has not made the required substantial showing of the  
15 denial of a constitutional right. Therefore, the Court declines to issue a certificate of appealability  
16 Based upon the foregoing, the Court **ORDERS**:

- 17 1. The Findings and Recommendations issued on March 15, 2023 (Doc. 22), are  
18 **ADOPTED** in full.
- 19 2. The petition for writ of habeas corpus (Doc. 1) is **DENIED**.
- 20 3. The Court declines to issue a certificate of appealability.
- 21 4. The Clerk of the Court is directed to close the case.

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23 IT IS SO ORDERED.

24 Dated: April 18, 2023

  
UNITED STATES DISTRICT JUDGE

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